

**TOWN OF DAVIE  
SPECIAL MEETING  
TOWN COUNCIL  
APRIL 12, 2000**

The meeting was called to order at 7:09 p.m. Present were Mayor Venis, Vice-Mayor Weiner, and Councilmembers Clark, Cox, and Paul. Also present were Town Administrator Middaugh, Town Attorney Webber, and Town Clerk Reinfeld recording the meeting.

1. Discussion on Weiss, Serota Request for Consent on Representation

Mr. Middaugh stated that he and Mr. Webber were approached by Weiss, Serota to seek permission for Nancy Stroud to continue her work with the City of Sunrise Planning Department as a consultant for limited services, given her new affiliation with Weiss, Serota. He had originally objected, as he was concerned with potential implications on the Town's litigation. Once his objections were relayed to Weiss, Serota, a telephone conversation was held by Messrs. Middaugh, Webber, and Serota to discuss these objections. Mr. Serota then sent a letter to Mr. Webber addressing the objections raised, offering some assurances regarding the arrangement, and protecting the Town's interests. Mr. Middaugh hand wrote a note to Mr. Webber stating that the assurances looked fine to him. Around the end of March, the Sunrise City Council considered the question of retaining Nancy Stroud, which the Town did not find out about until April 5th when a copy of a newspaper article was provided to Council.

Mr. Middaugh stated that Weiss, Serota assumed that the consent they had been seeking had been granted by the Town, so they moved forward. He added that the assumption was consistent with their firm's experience, and he had no reason to doubt them as they were a sincere and honorable firm. However, Messrs. Middaugh and Webber assumed that a more formal request would be made to the Town. Mr. Middaugh stated that no signed consent had been provided by the Town, and his handwritten note to Mr. Webber did not provide consent. He stated that each of the parties thought they had proceeded properly and with due caution, but they each had different expectations that caused the turn of events now before Council. Mr. Middaugh admitted that the matter could have been handled better, mainly by clarifying the expectations. He did not believe that any harm had been done to the Town, and its interests had been protected.

Joseph Serota stated that Weiss, Serota was hired in late 1997 to analyze the issue of water rates being charged to the Town by the City of Sunrise, and ultimately to commence litigation against the City of Sunrise based upon their belief that the rates charged by the City of Sunrise were excessive. He stated that this was a very difficult and complex case, and the firm was doing everything in its power to bring about a successful result. Mr. Serota stated that many strategies had been devised to pursue this matter, many of which had been shared with Council, but none of which had been revealed to the City of Sunrise, its attorneys, or anyone associated with the City of Sunrise.

Mr. Serota stated that he was the former president of the Dade County Bar Association, plus he had served five years as an elected member of the Florida Bar Board of Governors. He explained that one of the principal responsibilities of the Board of Governors was to evaluate allegations of ethical shortcomings by other attorneys and to punish those who violate their ethical duties. Mr. Serota stated that both he and Richard Weiss were rated AV by the National Attorney Rating Service - the A represents the highest rating for quality of attorney, the V represents the highest rating for ethics. He asserted that his firm would never compromise the interest of their clients.

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Mr. Serota stated that Weiss, Serota acted as City Attorney for nine cities, and the procedures employed in this matter were consistent with procedures followed for those nine cities and the other 25+ governments for whom they provide special counsel work. He added that conversations had been held with the Florida Bar to confirm that these procedures were consistent with the precise letter of the ethical rules promulgated by the Florida Bar.

Mr. Serota stated that Weiss, Serota hired Nancy Stroud and her associate, Susan Trevarthen, in early February 2000. He stated that Ms. Stroud was one of the most outstanding land use lawyers in the State of Florida, and was often retained by cities throughout the country to provide consulting services. Mr. Serota explained that Ms. Stroud and Ms. Trevarthen had provided assistance and consulting services to the City of Sunrise Planning Department for the past five years, strictly limited to issues involving the Planning staff and nothing to do with litigation matters. He explained that soon after Ms. Stroud and Ms. Trevarthen were hired by Weiss, Serota, Ms. Stroud informed him that the City of Sunrise was interested in employing them as consultants to perform the same activities they had been performing for the past five years under their previous firm. He stated that even though this would not create a legal conflict under the rules of professional responsibility, it was not considered until after talking to the Town and receiving its approval. Mr. Serota stated that Messrs. Middaugh and Webber had requested very specific assurances in writing as a condition for satisfying their objections and concerns. He read the letter he had sent to Mr. Webber in response to those objections and concerns. Mr. Serota stated that he spoke to Mr. Webber subsequent to the letter, at which time Mr. Webber advised him that he thought the assurances were adequate. He added that Mr. Middaugh also stated that he thought the safeguards provided in the letter were adequate. Mr. Serota stated that because of this, his firm thought the letter confirmed the Town's approval. Mr. Serota stated that the City of Sunrise hired Ms. Stroud and Ms. Trevarthen several weeks later.

Mr. Serota stated that in addition to the assurances in his letter and those expressed at the meeting tonight, he would like Council to know that Ms. Stroud and Ms. Trevarthen operated in a different office than where he principally practiced. He emphasized that at no time and under no circumstance had Davie/Sunrise legal matters been discussed in the presence of another attorney in either matter. Mr. Serota offered Council his word, his reputation, and his oral and written assurances that his firm had acted in the past in the best interest of the Town, and that he would never do anything to compromise that commitment as he felt privileged to be hired by the Town and to be given the responsibility of pursuing this important litigation. He asked if there was any further commitment or assurance he could provide.

Councilmember Cox asked Mr. Serota to explain what type of services Ms. Stroud would be performing for the City of Sunrise. Mr. Serota replied that she was a land use expert and that she would meet with the Planning Department when applications were made so they could ask her questions regarding what they should do. Councilmember Cox asked if Ms. Stroud appeared before the City of Sunrise Council to provide evidence. Mr. Serota replied negatively, explaining that she advised and sometimes represented the Planning staff.

Councilmember Clark asked Mr. Serota how the Town's concerns were forwarded to his firm and what the specific concerns were. Mr. Serota replied that the concerns were

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related by telephone. He indicated that the concerns were that the issue would not effect the relationship between Weiss, Serota and their diligence to pursue the matter and that there would be no integration or discussion between attorneys involving these matters. Mr. Middaugh clarified that the question to Mr. Serota was what his firm could do to assure that the Town's interests would be properly protected. Councilmember Clark asked if the request to Mr. Webber to allow the City of Sunrise to retain Ms. Stroud was in writing or verbal. Mr. Serota replied that it was also verbal. Councilmember Clark asked if it wasn't common to leave a paper trail when such decisions were being made. Mr. Webber replied that was the basis of the problem as there had been an informal discussion of how the Town would be protected. Mr. Serota explained that his firm's response was consistent with how it handled similar circumstances, which was always informal because if there was a problem the process would stop.

Councilmember Paul asked if the fact that Ms. Stroud worked from the Fort Lauderdale office and Mr. Serota worked from the Miami office was an additional protection. Mr. Serota replied that when a firm represented as many governments as Weiss, Serota did, there was always the possibility that an attorney may have knowledge in a case, at which time that attorney would not be allowed in the office when the issue was being discussed. He added that this was not because they were worried that someone was looking over their shoulder, but because ethically it was the best course of action. Councilmember Paul asked if it would be appropriate to have a statement from Ms. Stroud. Mr. Serota felt it was a reasonable and logical assurance. Councilmember Paul asked Mr. Serota to repeat the rules of professional responsibility Weiss, Serota was abiding by. Mr. Serota stated that the principle rule was conflict of interest. He stated that representing the City of Sunrise in this capacity was not adverse to the Town's interest, his firm therefore approached the Town for permission and was not denied. Mr. Serota stated that another relevant comment was what other issues/functions were involved and if an actual conflict could arise. He stated that the functions being performed were in planning and had nothing to do with litigation, therefore, the firm's strategy would never be revealed to Ms. Stroud and Ms. Trevarthen and they would not convey it even if it was revealed.

Vice-Mayor Weiner disagreed with Mr. Serota's interpretation of the rules of professional responsibility; however, there were circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation. He felt that the "client" was the body authorized to make decisions for the municipal corporation, the Town Council in this case. Vice-Mayor Weiner stated that his problem was not with Weiss, Serota, but with how staff handled the matter by depriving Council the opportunity to consent or not. He felt that Council could withdraw its consent or revoke the actions taken by its agent previously and stated that he did not want to consent.

Vice-Mayor Weiner asked why Council was not advised of the letter since an executive session was held the day after the letter was faxed between Messrs. Webber and Middaugh. He added that he would also like more detail of when events occurred, such as when and how long discussions were held with Ms. Stroud. Mr. Webber explained that a matter of whether the Town's outside counsel could obtain consent to represent a different client was not legally permissible to discuss in an executive session and would have

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jeopardized the confidentiality of that session. He stated that the letter was only to set forth certain assurances, and that he and Mr. Middaugh expected a public meeting to be held and public consent to be given. Mr. Webber added that what the Town was accustomed to, and what Weiss, Serota was accustomed to, were two different things. Vice-Mayor Weiner expressed concern that no one, especially an attorney representing the Town's interests, took the responsibility to make sure the matter was put in writing. Vice-Mayor Weiner did not agree about the executive session since the matter was related to the strategy on how the Town was going forward; however, a regular meeting followed the executive session and the issue could have been brought up during the Town Attorney's or Town Administrator's report. Mr. Webber stated that he had not received a letter or phone call indicating that Weiss, Serota was going forward, therefore, expecting an additional step of being added to Council agenda, he did not know it was the appropriate time to discuss a possible conflict.

Vice-Mayor Weiner asked Mr. Serota if Ms. Stroud was doing work for the City of Sunrise at her previous firm. Mr. Serota replied that she had done work before she came to Weiss, Serota, but not after she came to the firm.

Mayor Venis stated that he had similar concerns about Council not being apprised of the situation. He expressed concern that if not for the newspaper article, Council still may not know about the issue. Mayor Venis stated that any issue needing a decision should be brought up by the Town Attorney or Town Administrator at a Council meeting. Mr. Weiss stated that he wished someone had said no, because the consulting service for the City of Sunrise was a relatively small matter, and less important, compared to the Town's litigation. He agreed with Mr. Webber that the executive session was not a permissible time to bring up the matter as the scope was limited by Statute to settlement discussion on litigation costs, not strategy; however, past experience of his firm's role as City Attorney did not require further permission after the confirmation letter and they assumed it was the same with the Town. Vice-Mayor Weiner asked what would have happened if Weiss, Serota had been advised that Council must first be advised of the situation. Mr. Weiss replied that as Weiss, Serota delayed answering the City of Sunrise until it had been discussed with the Town, acceptance would have been delayed until it had been discussed with Council. He added that this was a nightmare, especially since he did not know what else his firm could have done.

Mr. Middaugh stated that he and Mr. Webber were equally concerned about the impact that this issue would have on their professional conduct and therefore, had no incentive to purposely put the Town in a bad position. He agreed that he could have brought it up during a Town Administrator's report, however, Council needed to hear from Weiss, Serota to get the details he was not aware of. Mr. Middaugh stated that this was not an attempt to take the decision from Council, he just expected a document that stated that he was signing off on the issue which he would have then presented to Council. He stated that he equally believed that Weiss, Serota had acted on their experience of not doing it that way.

Mr. Weiss asked what Weiss, Serota could do to assure Council. Mayor Venis asked Mr. Weiss if his firm would be willing to drop the City of Sunrise as a client during the Town's litigation. Mr. Weiss could not answer as it was an uncomfortable issue that would have to be discussed internally. He stated that the issue was not money, but firm integrity, as they had asked the City of Sunrise to wait for approval by the Town, and had waited instead of hiring another attorney.

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Councilmember Cox asked Mr. Weiss if the Town's position in the lawsuit has been compromised or harmed in any way by the action of either Weiss, Serota or the Town. Mr. Weiss replied negatively. Mr. Serota stated that he was in charge of this litigation, and confirmed that the Town's position had not been harmed and would not be. He stated that this was already in writing and further assurances could be put in writing also.

Councilmember Cox stated that the most important issue was whether the Town's case against the City of Sunrise had been harmed. She stated that although she too was not happy that Council was not informed, she felt that the situation was a misunderstanding. Councilmember Cox said she had asked other attorneys if this activity was unusual and it was not. She added that she had read over the bar of statutes regarding conflicts, and she was comfortable that the Town's position could be safeguarded. Councilmember Cox did not see any reason to ask Ms. Stroud to remove herself from her position as consultant for the City of Sunrise. She stated that the second issue was how staff had handled the matter.

Mayor Venis stated that the residents were very uncomfortable that Weiss, Serota was representing both the Town and the City of Sunrise. He stated that since it was the residents' money the Town was spending on the litigation, both he and the residents would be more comfortable if Weiss, Serota represented only the Town until the litigation was over.

Councilmember Paul stated that she also talked to other attorneys, and that all agreed that Weiss, Serota was a reputable firm with no question to their abilities and position in the legal community. She said that they did not all agree, however, on the issue at hand. Councilmember Paul felt that if Mr. Weiss had the expectation that the Town might have said no, the firm should not have taken the case. Mr. Weiss clarified that he did not have any expectation that the answer would be no, but if he knew then what he knew now he would have wished the Town said no to save the problems that had arisen. Councilmember Paul stated that she would be more comfortable if Ms. Stroud would decline work from the City of Sunrise until the litigation was over and asked how long Ms. Stroud had been acting as consultant to the City of Sunrise. Mr. Serota replied that it was less than a month. Councilmember Paul asked if the Town could move forward from this point and maintain the relationship with Weiss, Serota.

Vice-Mayor Weiner stated that he was not comfortable on behalf of the constituents having the Town's attorney represent, even on a wholly unrelated matter. He stated that he would like Weiss, Serota to continue litigation, but only on the basis of Ms. Stroud declining further representation of the City of Sunrise until the conclusion of this litigation and any appeals. Vice-Mayor Weiner stated that ethic's laws were in place to protect the client - the Town and its residents.

Mr. Middaugh suggested that if a motion was going to be made to proceed with the litigation using the services of Weiss, Serota contingent upon the disengagement of Ms. Stroud from her work in the City of Sunrise, that Council give Weiss, Serota an opportunity to talk internally and with their client, and in the chance that they did as the Town asked, another Council vote would not be necessary. He explained that this would at least save Weiss, Serota the awkward position of possibly firing their client tonight and their client reading it in the paper tomorrow. Mr. Serota stated that although he did not think the motion was appropriate under the circumstances, his firm would abide by what the majority said.

Mayor Venis asked if anyone from the public wished to speak.

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Dan Barr, 13323 SW 40 Street, said that since everyone agreed Weiss, Serota was not given consent, Council should withhold consent and stop everything right here and right now.

Dean Alexander asked about the security of computers and files with regard to availability to other attorneys in the firm. Mr. Serota stated that it was always possible.

Bruce McGee read a letter from Bonnie Miskel of Ruden, McClosky, Smith, Schuster, and Russell. Although the letter was relating to the use of a canal easement for a horse path, the letter indicated that Mr. Webber had told Ms. Miskel that in the event of litigation, there would be a conflict of her representing land owners since Ruden, McClosky had done bond work for the Town. Mr. McGee felt that if bond work and a horse trail were a conflict, the litigation was joined at the hip. Mr. McGee felt that there was a conflict in Mr. Webber's opinions, and asked if the Town could have absolute confidence that Weiss, Serota, or any other firm, could serve two masters on the same case.

Tom Truex, 4740 SW 72 Avenue, stated that "the bell could not be unrung" and it was necessary to move forward from this point in time. He stated that his problem with the proposed motion was that if Weiss, Serota could not disengage themselves from the relationship with the City of Sunrise, they would have to withdraw from the Town's litigation which would be throwing away the approximate \$138,000 spent so far plus however much it would cost to bring a new law firm in. Mr. Truex asked if uninformed opinions from residents were better than the informed opinion Council now had. He expressed concern that Council was going to elevate a minuscule problem that would cause no harm to the Town just to get a few votes, which was unconscionable.

Based on Mr. Truex' comments, Councilmember Cox stated that if Weiss, Serota could not easily disengage themselves from the consulting work with the City of Sunrise, she preferred Councilmember Paul's suggestion to obtain Ms. Stroud's guarantee that there would be no exchange of information and no compromise of the Town's case. Mr. Weiss answered that disengaging would be difficult and the firm was not comfortable having to decide between clients. He stated that his firm was willing to make any other assurance the Town wished, but asked that they not be made to disengage.

Vice-Mayor Weiner told Mr. Truex that he did not care about next year's elections, but there was value to the process and the ethics of the process. He stated that the Town was in a messy quagmire which he felt would be best resolved by Weiss, Serota disengaging itself from the City of Sunrise during the impending litigation. Vice-Mayor Weiner felt that the residents in west Davie did not want City of Sunrise water anymore and did not want anything to tarnish the opportunity to get the City of Sunrise out of the Town's water system in the west.

Vice-Mayor Weiner made a motion, seconded by Councilmember Paul, to retain the services of Weiss, Serota contingent upon them disengaging from their representation of the City of Sunrise and to advise Council by Monday morning as to whether or not they were able to do so; if not, an emergency meeting would be necessary. In a roll call vote, all voted in favor.

Vice-Mayor Weiner asked how Council should address the way staff handled this issue. He stated that he was not asking Mr. Middaugh to resign, but wanted to make sure that Council was informed of major issues such as this. Vice-Mayor Weiner recalled that the ethics opinions in commentary stated that an attorney should advise his client in the

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event their guidelines/rules were not clear as to who makes the decision so something could be put in the internal rules. He suggested a resolution or ordinance providing for conflicts on outside professionals be brought to the Town Council. Vice-Mayor Weiner stated that he had told Mr. Middaugh during the interview process that he did not have to earn his trust, he just had to keep it. He stated that he felt betrayed because staff decided they could handle a very important issue without Council.

Councilmember Paul stated that she did not want to find out about any issue, whether it seemed important or not, from the newspaper. She added that she thought the briefings would have addressed this type of problem, and hoped for better communication between the Town Administrator and members of Council in the future. Councilmember Paul stated that this was a hard way to learn a lesson, but that it was important to turn the mistake into a learning experience. She felt if we could learn from the mistake, we could improve on it and move forward.

Councilmember Cox wondered why the issue ever made it to the newspaper. She added that Messrs. Webber and Middaugh could have handled the situation better, however also felt that no long term harm had been done and hoped matters of this importance would be conveyed to Council in the future.

Mr. Middaugh said he took to heart Council's concerns about communication and reiterated that it was a communication issue, not an attempt to handle a problem without Council. Mr. Webber stated that the procedure had always been to go through the Town Administrator, not Council directly to avoid any possibility of breaking the Sunshine Law.

Mayor Venis stated that when Mr. Middaugh was interviewed, he was asked to review each department and make appropriate changes to make each department operate more efficiently. He asked that a progress report be given at the next meeting, because he could effectively gauge how a department was being run by the telephone calls he received from the public. Mayor Venis stated that changes needed to be made to streamline paperwork, which would improve communication.

There being no objections or further business, the meeting was adjourned at 8:47 p.m.

APPROVED \_\_\_\_\_

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Mayor/Councilmember

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Town Clerk